

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR SERVICES**

**AT&T CORP.**

**1. Introduction**

**A. Parties**

This Contract for services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and AT&T Corp. (hereinafter "Vendor"), with its principal place of business at One AT&T Plaza, Dallas, Texas 75202.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-199, on October 30, 2012, for Cloud Services. DIR subsequently issued a BAFO opportunity for Cloud Assessment Services on July 8, 2013. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-199 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Sample Statement of Work for Cloud Services; Appendix E; Sample Statement of Work for Cloud Assessment Services; Appendix F, Service Description and Service Level Agreement; Appendix G, Cloud Assessment Services Description; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-199, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-199, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Appendix G, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend this Contract, upon mutual agreement, for up to three (3) optional one-year terms. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional terms.

**3. Service Offerings**

Services available under this Contract are limited to those specified in Appendix C, Pricing Index. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

**4. Pricing**

**A. Manufacturer's Suggested Retail Price (MSRP)**

MSRP is defined as the sales price suggested by the manufacturer or publisher of the service.

**B. Customer Discount**

The minimum Customer discount for all services will be the percentage off MSRP as specified in Appendix C, Pricing Index. Customer Discount includes the DIR administrative Fee specified in Section 5.

**C. Customer Price**

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing services under this Contract may negotiate more advantageous pricing for volume purchases or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request. DIR Customers may choose between the lower of a Vendor special promotional offering or the DIR discounted price offered under this Contract but are not eligible to combine the two.

3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Texas Customer who is not purchasing those products or services under this Contract or (ii) any other Texas entity or consortia authorized by Texas law to sell said products and services to eligible Texas Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted to Texas Customers by Vendor or its resellers for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases or to any purchases outside the State of Texas. This Contract shall be amended within ten (10) business days to reflect the lower price.

**D. DIR Administrative Fee**

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**E. Tax-Exempt**

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customer shall provide a tax exemption certificate upon request.

**F. Travel Expense Reimbursement**

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

**G. Changes to Prices**

Vendor may change the price of any service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

**5. DIR Administrative Fee**

**A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-fourths of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

**B)** The DIR Administrative Fee described in 5.A) above is imposed on the Vendor. All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Such Administrative Fees may change over time and DIR will provide Vendor with ninety (90) days advance written notice of such change.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Grace Windbigler  
Division Director  
Technology Sourcing Office  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Facsimile: (512) 475-4759

If sent to the Vendor:

Marcus Montemayor  
AT&T Corp.  
712 E Huntland Dr Rm 313  
Austin TX 78752  
Phone: (512) 421-5160  
Facsimile: (512) 870-4388  
E-mail: [marcus.montemayor@att.com](mailto:marcus.montemayor@att.com)

**7. Statements of Work and Service Agreement**

**A. Statement of Work and Service Agreement**

Services provided under this Contract shall be based on the Sample Statements of Work as set forth in Appendices D and E of this Contract and the Service Agreement as set forth in Appendix F of this Contract, and any agreed-upon Statement of Work and/or Schedules. Customers may negotiate the terms and conditions of a SOW and Service Agreement to suit their business needs subject to Vendor agreement, so long as the negotiated terms and conditions do not diminish Vendor's commitments set forth in the Appendix D and E, Sample Statements of Work, Appendix F, Service Agreement, or this Contract.

**8. Intellectual Property Matters**

At present, no development of new code or other customization of Intellectual Property is contemplated under this contract. At such time Vendor and Customer agree to a scope or work involving new code development, the parties agree to negotiate applicable Intellectual Property provisions.

**9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts.**

**1. Appendix A, Section 2, Definitions,** is hereby restated in its entirety as follows:

**Affiliate of a party** means any entity that controls, is controlled by, or is under common control with, such party.

**Customer** - Customer - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code.

**Compliance Check** – an audit of Vendor’s compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.

**Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.

**CPA** – refers to the Texas Comptroller of Public Accounts.

**Damages** - means collectively all injury, damage, liability, loss, penalty, interest and expense incurred.

**Day** - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

**Effective Date** - means, for any Service Agreement, the date on which the last party signs the Service Agreement unless a later date is required by regulation or law.

**Purchase Order** - the Customer’s fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).

**State** – refers to the State of Texas.

**Service Agreement** - means the agreement executed by Customer for Services provided under this Contract, including any Statements of Work and/or Schedules.

**Service** - means a service (including Equipment) provided under this Contract.

**Service Component** - means an individual component of a Service provided under this Contract.

**Site** - means Customer’s physical location, including Customer’s collocation space on Vendor’s, its Affiliate’s, or subcontractor’s property, where Vendor installs or provides a Service.

2. **Appendix A, Section 3, General Provisions, B. Modifications of Contract Terms and/or Amendments, 2)**, is hereby restated in its entirety as follows:

2) Customers shall not have the authority to modify the terms of the Contract; however, (a) additional Customer terms and conditions that do not conflict with the Contract and are acceptable to Vendor may be added in a Purchase Order and (b) custom terms and conditions that do not conflict with the Contract (as mutually agreed by Vendor and Customer) may be added in a Service Agreement, and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the

event of a conflict between a Customer's Purchase Order and the Contract, the Contract term shall control.

3. **Appendix A, Section 3, General Provisions, E. Survival**, is hereby restated in its entirety as follows:

**E. Survival**

All Purchase Orders issued and accepted by Vendor prior to the expiration or termination of the Contract shall survive expiration or termination of the Contract.

4. **Appendix A, Section 3, General Provisions, F. Choice of Law**, is hereby restated in its entirety as follows:

**F. Choice of Law**

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity; or to waive any rights or defenses of Vendor.

5. **Appendix A, Section 5, Contract Fulfillment and Promotion, A. Services, Sales, and Support of the Contract**, is hereby restated in its entirety as follows:

**A. Services, Sales, and Support of the Contract**

Subject to the availability and operation limitations of the necessary facilities and equipment, Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract.

6. **Appendix A, Section 6, Purchase Orders, Invoices, and Payments, C. Payments**, is hereby restated in its entirety as follows:

Customers shall comply with Chapter 2251, Texas Government Code, in making payments to Vendor. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

For Customers who are not subject to Chapter 2251 and not Texas governmental entities, payment is due within thirty (30) days after the date of the invoice, and payment must refer to the invoice number. Vendor may charge late payment fees at the lower of 1.5% per month or the maximum rate allowed by law for overdue payments.

7. **Appendix A, Section 7, Contract Administration, B. Reporting and Administrative Fees, 4) DIR Administrative Fee, a)**, is hereby restated in its entirety as follows:

An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. Payment of the administrative fee shall be due on the fifteenth (15<sup>th</sup>) calendar day after the close of the previous month period. DIR may change the amount of the administrative fee upon ninety (90) days written notice to Vendor without the need for a formal contract amendment.

8. **Appendix A, Section 8, Vendor Responsibilities, A. Indemnification, 2) Acts and Omissions**, is hereby restated in its entirety as follows:

**2) Acts and Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS OR ASSIGNEES, FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED REASONABLE COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, or suppliers of subcontractors in the execution or performance of the Contract, Customer Services Agreement and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

9. **Appendix A, Section 8, Vendor Responsibilities, A. Indemnification, 3) Infringements**, is hereby restated in its entirety as follows:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR ("SERVICES") PURSUANT TO THIS CONTRACT, but not in circumstances where the claimed infringement arises solely out of or results from: (a) Customer's, its Affiliate's or a User's content; (b) modifications to the Service by Customer, its Affiliates or third parties, or combinations of the Service with any services or products not provided by Vendor; (c) Vendor's

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adherence to Customer's or its Affiliate's written requirements; or (d) use of the Service in violation of this Contract (including the Service Agreement). VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL REASONABLE COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. The defense shall be coordinated by VENDOR WITH THE Office of the Attorney General WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing. If neither option (i) nor (ii) are reasonably available, Vendor may terminate the affected service without liability other than as stated in section a), above. Customer will have all remedies available to it for a termination for Vendor's breach.

**10. Appendix A, Section 8, Vendor Responsibilities, B. Taxes/ Worker's Compensation/ UNEMPLOYMENT INSURANCE,** is hereby restated in its entirety as follows:

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE EMPLOYMENT BENEFIT OR EMPLOYMENT BENEFIT OF ANOTHER



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GOVERNMENTAL ENTITY CUSTOMER. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY EMPLOYMENT BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES AND/OR DESIGNEES , FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, REASONABLE ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY OF VENDOR, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF EMPLOYMENT BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

11. **Appendix A, Section 8, Vendor Responsibilities, H. Confidentiality, new section 3),** is hereby added as follows:

**3) Confidential Information.** Confidential Information means: (a) information the parties share with each other in connection with this Agreement or in anticipation of providing Services under this Agreement, but only to the extent identified as Confidential Information in writing; and (b) except as may be required by applicable law or regulation, the terms of this Agreement and any pricing or other proposals.

a) **Obligations.** Each party's Confidential Information will, permanently following its disclosure to the other party (i) be held in confidence; and (ii) not be disclosed, except to the receiving party's employees, agents and contractors having a need-to-know (but only if such agents and contractors are not direct competitors of the other party and agree in writing to use and disclosure restrictions as restrictive as this Section 8), or to the extent compelled to be revealed by law (including the Texas Public Information Act), governmental authority or legal process (but only if such disclosure is limited to that which is compelled by such legal process and prompt notice is provided to the disclosing party to the extent practicable and not prohibited by law or legal process).

These obligations will survive the expiration or termination of the Contract or any Purchase Order under it.

b) **Exceptions.** The restrictions in this Section will not apply to any information that: (a) is independently developed by the receiving party; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; or (c) becomes generally available to the public other than by breach of this Agreement.

c) **Privacy Laws.** Each party is responsible for complying with the privacy laws applicable to its business. If Customer does not want Vendor personnel to comprehend Customer data to which they may have access in performing Services, Customer should encrypt such data so that it will be unintelligible. Until directed otherwise by Customer in writing, if Vendor designates a dedicated account representative as Customer's primary contact with Vendor, Customer authorizes that representative to discuss and disclose Customer's customer proprietary network information (CPNI) to any employee or agent of Customer without a need for further authentication or authorization.

12. **Appendix A, Section 8, Vendor Responsibilities, I. Security of Premises, Equipment, Data, and Personnel**, is hereby restated in its entirety as follows:

**I. Security of Premises Equipment, Data, and Personnel**

Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials (collectively referred to as "Data") belonging to the Customer. Vendor and/or Order Fulfiller shall use their best efforts to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the instruction of the Customer. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, workplace, and its contents when such damage is caused by its employees or subcontractors. The Customer will give Vendor a written copy of any applicable security requirements, and a reasonable opportunity to review the requirements and discuss the requirements and their impact on project performance, schedule and price with the Customer before agreeing to the security requirements. If Vendor is in breach of a security requirement, Customer will provide reasonable notice and opportunity to cure before Customer terminates its Purchase Order and related Service Agreement.

13. **Appendix A, Section 8, Vendor Responsibilities, M. Overcharges**, is hereby restated in its entirety as follows:

**M. Overcharges**

Vendor hereby assigns to DIR any and all claims against its suppliers for overcharges associated with products and services provided to DIR and Customers under this contract if such claims arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq. (1973), as amended and the antitrust laws of the State, Section 15.01, et seq, Texas Business & Commerce Code.

**14. Appendix A, Section 8, Vendor Responsibilities, O. Required Insurance Coverage,** is hereby restated in its entirety as follows:

**A. Required Insurance Coverage**

As a condition of this Contract with DIR, Vendor shall provide evidence of the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are at least A-minus financially rated by AM Best or A by Standard and Poors and duly admitted and authorized to do business in the State of Texas. The Customer and DIR will be included as Additional Insureds on all required auto and general coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

**1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer included as an additional insured;
- d) underwriters will endeavor to provide at least 30-day Notice of Cancellation to DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

**2) Workers' Compensation Insurance**

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

**3) Business Automobile Liability Insurance**

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per

accident for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) underwriters will endeavor to provide at least 30-day Notice of Cancellation; and;
- c) Additional Insured.

15. **Appendix A, Section 8, Vendor Responsibilities, Q. Immigration,** is hereby restated in its entirety as follows:

The Vendor shall comply with all requirements related to federal immigration laws and regulations, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Vendor shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

- all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and
- all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of this Contract and assigned by the subcontractor to perform work pursuant to this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

16. **Appendix A, Section 8, Vendor Responsibilities, U. Deceptive Trade Practices; Unfair Business Practices,** is hereby restated in its entirety as follows:

**U. Deceptive Trade Practices; Unfair Business Practices**

Vendor represents and warrants that (i) neither Vendor nor any of its Subcontractors has within the last three years been found liable in any administrative hearing, litigation or other proceedings of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code; and (ii) it has no officers who have been found liable in any administrative hearing, litigation or other proceedings

of Deceptive Trade Practices violations under Chapter 17, Texas Business & Commerce Code.

17. **Appendix A, Section 8, Vendor Responsibilities, new section W. Disclaimer of Warranties**, is hereby added to the Contract as follows:

**W. Disclaimer of Warranties**

EXCEPT AS SET FORTH IN Section 8A 3) "Infringements", VENDOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE OR COURSE OF DEALING. FURTHER, VENDOR MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER), OR GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY SERVICE, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING, OR THAT VENDOR'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF, OR IMPROPER ACCESS TO, CUSTOMER'S DATA AND CONFIDENTIAL INFORMATION.

18. **Appendix A, Section 8. Vendor Responsibilities, new section X. Disclaimer of Liabilities**, is hereby added to the Contract as follows:

**X. Disclaimer of Liabilities**

VENDOR WILL NOT BE LIABLE FOR ANY DAMAGES, EXCEPT TO THE EXTENT CAUSED BY VENDOR'S NEGLIGENCE, ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, CONTENT, OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, OR INTERRUPTIONS (EXCEPT FOR LIABILITY FOR SUCH EXPLICITLY SET FORTH IN THIS AGREEMENT OR A SERVICE AGREEMENT); ANY INTERRUPTION OR ERROR IN ROUTING OR COMPLETING CALLS OR OTHER TRANSMISSIONS (INCLUDING 911 CALLS OR ANY SIMILAR EMERGENCY RESPONSE NUMBER); LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS, OR DESTRUCTION OF CUSTOMER'S, ITS AFFILIATE'S, USERS', OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, CONFIDENTIAL INFORMATION, NETWORK, OR SYSTEMS.

19. **Appendix A, Section 8, Vendor Responsibilities, new section Y. Application and Survival**, is hereby added to the Contract as follows:

**Y. Application and Survival**

The disclaimer of warranties and limitations of liability set forth in this Contract will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise and whether damages were foreseeable, and will apply so as to limit the liability of each party and its Affiliates, and their respective employees, directors, subcontractors, and suppliers. The limitations of liability and disclaimers set out in this Section 8 will survive failure of any exclusive remedies provided in this Contract.

20. **Appendix A, Section 9, Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation**, is hereby restated in its entirety as follows:

By executing the Purchase Order or Service Agreement, Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of Customer's current fiscal period. In the event Customer is unable to obtain the necessary appropriations or funding for the Services provided under the Purchase Order or Service Agreement, Customer may terminate the Purchase Order or Service Agreement without liability for the termination charges set forth in Section 10 B.9. Customer must provide Vendor thirty (30) days' written notice of its intent to terminate the Purchase Order or Service Agreement. Termination of the Purchase Order or Service Agreement for failure to obtain necessary appropriations or funding shall be effective as of the last day for which funds were appropriated or otherwise made available.

If, after the first fiscal year in which a particular Service acquired hereunder is installed, funds are not appropriated to continue paying for that particular Service in a subsequent fiscal year or universal service discounts are not received to enable Customer to pay for that particular Service in a subsequent fiscal year, then Customer may terminate that particular Service as of the last day for which funds were appropriated or universal service discounts were received ("Date of Termination"), without being subject to termination charges set forth in the applicable Service Agreement; provided, however; that Customer shall be obligated to pay all charges incurred through the Date of Termination. Customer will make reasonable effort to notify Vendor thirty (30) days before the end of available appropriations; however, failure to do so will not subject customer to liability beyond the available appropriation.

21. **Appendix A, Section 9, Contract Enforcement, B. Termination, 3) Termination for Convenience**, is hereby restated in its entirety as follows:

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar day's written notice. A Customer may terminate a Purchase Order within thirty (30) days of issuance of the Purchase Order if it is reasonably determined by the Customer that Vendor will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

22. **Appendix A, Section 9, Contract Enforcement, B. Termination 4) Termination for Cause, b) Purchase Order**, is hereby restated in its entirety as follows:

**b) Purchase Order or Service Agreement**

Customer or Vendor may terminate a Purchase Order or Service Agreement upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or Service Agreement in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order or Service Agreement.

23. **Appendix A, Section 9, Contract Enforcement, B. Termination, 5) Customer Rights Under Termination**, is hereby restated in its entirety as follows:

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and as related to any Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract. However, such Purchase Order shall expire no later than the end of its then effective term, and shall not be subject to renewal and/or extension unless the Vendor and Customer mutually agree in writing.

24. **Appendix A, Section 9, Contract Enforcement, B. Termination, 6) Vendor or Order Fulfiller Rights Under Termination**, is hereby restated in its entirety as follows:

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date if such products or services have been ultimately accepted by Customer, and 2) (in the event of early termination of Purchase Order) any applicable early termination fees associated with such early terminated Purchase Order. If termination is due to Vendor's breach, no early termination fees will apply

25. **Appendix A, Section 9, Contract Enforcement, B. Termination, new section 7) Suspension and Termination of Services**, is hereby added as follows:

The following additional suspension and termination of Services provisions apply:

- (a) **Fraud or Abuse.** Vendor may terminate or suspend an affected Service immediately by providing Customer with as much advance notice as is reasonably practicable under the circumstances if Customer (i) commits a

fraud upon Vendor, (ii) utilizes the Service to commit a fraud upon another party, (iii) unlawfully uses the Service, (iv) abuses or misuses Vendor's network or Service, or (v) interferes with another customer's use of Vendor's network or services.

- (b) **Withdrawal of Services.** Notwithstanding that a Pricing Schedule or Service Agreement may commit Vendor to provide a Service to Customer for a Term, and unless applicable law or regulation mandates otherwise, Vendor may discontinue providing a Service upon 12 months' notice, or a Service Component upon 120 days' notice, but only where Vendor generally discontinues providing the Service or Service Component to similarly-situated customers.
- (c) **Materially Adverse Change.** If Vendor revises a Service Publication and the revision has a materially adverse impact on Customer, and Vendor does not effect revisions that remedy such materially adverse impact within 30 days after notice from Customer, then Customer may, as Customer's sole remedy, elect to terminate the affected Service Components on 30 days' notice to Vendor, given not later than 90 days after Customer first learns of the revision to the Service Publication. "Materially adverse impacts" do not include changes to non-stabilized pricing, changes required by governmental authority, or assessment of or changes to additional charges such as surcharges or taxes.
- (d) **Internet Services.** If Customer fails to rectify a violation of the AUP within 5 days after notice from Vendor, Vendor may suspend (and later terminate) or terminate the Service. If Services are provided over or access the Internet, Vendor may act immediately and without notice to suspend or terminate Service in response to a court order or government notice that certain conduct must be stopped or when Vendor reasonably determines (i) that it may be exposed to sanctions or prosecution; (ii) that such violation may cause harm to or interfere with the integrity or normal operations or security of Vendor's network or networks with which Vendor is interconnected or interfere with another customer's use of Vendor services or the Internet; or (iii) that continuation of the Services otherwise presents imminent risk of harm to Vendor or Vendor's customers or their respective employees.

26. **Appendix A, Section 9, Contract Enforcement, B. Contract Termination, new section 8) Effect of Termination,** is hereby added as follows:

- a) Termination by either party of a Service Component or Service does not waive any other rights or remedies a party may have under the Service Agreement. Termination or suspension of a Service Component or Service will not affect the rights and obligations of the parties regarding any other Service.
- b) If a Service or Service Component is terminated, Customer will pay all amounts



incurred prior to the effective date of termination. If Customer terminates a Service or Service Component for reasons other than non-appropriation of funds, delay due to force majeure, or breach by AT & T, prior to the date Customer's obligation to pay for Services begins, Customer will reimburse Vendor for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

27. **Appendix A, Section 9, Contract Enforcement, B. Contract termination, new section 9) Termination Charges,** is hereby added to the Contract as follows:

If, on or after Customer's obligation to pay for Services begins, Customer terminates a Purchase Order or Service Agreement for convenience or Vendor terminates a Purchase Order or Service Agreement for Customer's fraud or abuse, Customer's hazardous materials violations, or Customer's material breach, Customer will pay termination charges as follows:

If termination occurs before the end of the term of the Service Agreement, 50% (unless a higher percentage is specified in the Service Agreement) of the monthly recurring charges specified in such Service agreement for the terminated Service or Service Component multiplied by the months remaining in the term, plus any waived or unpaid non-recurring charges identified in the Service Agreement, plus any charges incurred by Vendor from a third party (e.g., not an Vendor Affiliate) identified in the Service Agreement, due to the termination. AT & T will use commercially reasonable efforts to mitigate such third party charges.

28. **Appendix A, Section 9, Contract Enforcement, C. Force Majeure,** is hereby restated in its entirety as follows:

Except in the case of payment of amounts due, DIR, Customer, or Vendor may be excused from performance under the Contract for any period when performance is prevented due to any cause beyond such non-performing party's reasonable control, including an act of God, strike, war, civil disturbance, epidemic, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, embargo, labor disputes, acts of civil or military authority, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order within thirty (30) days of the issuance of the Purchase Order if it is reasonably determined by the Customer that, as a result of a Force Majeure event. Vendor will not be able to deliver products or services in a timely manner to meet the business needs of the Customer.

29. **Appendix A, new Section 12, Import/Export Control**, is hereby added to the Contract as follows:

The parties acknowledge that equipment, services, software, and technical information (including technical assistance and training) provided under this Contract may be subject to import and export laws, conventions or regulations, and any use or transfer of the equipment, products, software, and technical information must be in compliance with all such laws, conventions and regulations. The parties will not use, distribute, transfer, or transmit the equipment, services, software, or technical information (even if incorporated into other products) except in compliance with such laws, conventions and regulations. Customer, not Vendor, is responsible for complying with such laws, conventions and regulations for all information, equipment and software Customer transmits between countries using the Services.

30. **Appendix A, new Section 13, No Third Party Beneficiaries**, is hereby added to the Contract as follows:

This Agreement is for the benefit of permitted Customers and Vendor, and does not provide any third party (including Users) the right to enforce or bring an action for any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

31. **Appendix A, new Section 14, Survival**, is hereby added to the Contract as follows:

The respective obligations of Customer and Vendor that by their nature would continue beyond the termination or expiration of this Contract, including without limitation, the obligations set forth in Sections related to Confidentiality, Disclaimers and Limitations of Liability, and Indemnification, will survive termination or expiration.

32. **Appendix A, new Section 15, AT & T Deliverables**, is hereby added to the Contract as follows:

**A. Services.** Vendor agrees to either provide or arrange to have an Vendor Affiliate provide Services to Customer in accordance with this Contract, subject to availability and operational limitations of systems, facilities and equipment. Where required, an Vendor Affiliate authorized by the appropriate regulatory authority will be the service provider.

**B. Vendor Equipment.** Services may include use of certain equipment owned by Vendor that is located at the Site ("Vendor Equipment"), but title to the Vendor Equipment will remain with Vendor. Customer must provide electric power for the Vendor Equipment and keep the Vendor Equipment physically secure and free from liens and encumbrances. Customer will bear the risk of loss or damage to Vendor Equipment (other than ordinary wear and tear) except to the extent caused by Vendor or its agents.

**C. Software.** Any software used with the Services will be governed by the written terms and conditions applicable to such software. Title to software remains with Vendor or its supplier. Customer must comply with all such terms and conditions and they take precedence over this Contract as to such software.

33. **Appendix A, new Section 16, Customer's Cooperation**, is hereby added to the Contract as follows:

- A. Access Right.** Customer will in a timely manner allow Vendor to access property and equipment that Customer controls as reasonably required to provide the Services, and Customer will obtain, at Customer's expense, timely access for Vendor to property that Customer does not control (other than public property) as reasonably required to provide the Services. Access rights include the right to construct, install, repair, maintain, replace and remove access lines and network facilities, as well as to use ancillary equipment space within a building, as necessary for Customer's connection to Vendor's network. Customer must provide Vendor timely information and access to Customer's facilities and equipment as Vendor reasonably requires to provide the Services, subject to Customer's reasonable security policies. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/utilities, and other items reasonably required to perform installation of the Services, and obtain any necessary licenses, permits and consents (including easements and rights-of-way). Customer will have the Site ready for Vendor to perform its work according to a mutually agreed schedule.
- B. Safe Working Environment.** Customer will ensure that the location at which Vendor installs, maintains or provides Services is a suitable and safe working environment, free of Hazardous Materials. "Hazardous Materials" means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. Vendor does not handle, remove or dispose of Hazardous Materials, and Vendor has no obligation to perform work at a location that is not a suitable and safe working environment. Vendor will not be liable for any Hazardous Materials. If Vendor encounters any Hazardous Materials at the Site where Vendor is to install, maintain or provide Services, Vendor may terminate the affected Service or Service Component, or suspend performance until Customer removes and remediates Hazardous Materials at Customer's expense in accordance with applicable law.
- C. Users.** "User" means anyone who uses or accesses any Service provided to Customer. Customer will cause Users to comply with this Agreement, and Customer agrees that Customer is responsible for Users' use of any Services, unless expressly provided to the contrary in applicable Service Publications.

**D. Resale of Services.** Customer may not resell the Services to third parties without Vendor's written consent. Where permitted under applicable law, Customer may resell the Services to Customer's Affiliates without Vendor's consent.

**E. Internet Services.** If a Service is provided over or accesses the Internet Customer, Customer's Affiliates, and Users must comply with the AUP.

34. **Appendix A, Section 17, Overview of Documents**, is added to the Contract as follows:

**Overview of Documents.** The terms and conditions governing the Services that Vendor provides to Customer are set forth in the Contract, Service Agreement and the following additional documents, and any other documents executed by the parties and referencing this Contract (which documents together with this Contract are called "this Contract"):

(a) **Pricing Schedules.** A Pricing Schedule (including related attachments), attached to and a part of a Service Agreement, which identifies the Services Vendor may provide to Customer, the price (including discounts, if applicable) for each Service, and the term during which such prices are in effect ("Pricing Schedule Term").

(b) **Tariffs and Guidebooks.** "Tariffs" are documents containing the standard descriptions, pricing, and other terms and conditions for a Service that Vendor files with regulatory commissions. "Guidebooks" are documents containing the standard descriptions, pricing, and other terms and conditions for a Service that were, but no longer are, filed with regulatory commissions. Tariffs and Guidebooks may be found at [att.com/service\\_publications](http://att.com/service_publications) or other locations Vendor may designate.

(c) **Acceptable Use Policy.** Vendor's Acceptable Use Policy ("AUP") applies to Services provided over or accessing the Internet. The AUP may be found at [att.com/aup](http://att.com/aup), or other locations Vendor may designate.

(d) **Service Guides.** The description, pricing, and other terms and conditions for the Service may be contained in a Service Guide, which may be found at [att.com/service\\_publications](http://att.com/service_publications) or other locations Vendor may designate.

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Vendor Contract No. \_\_\_\_\_

This Contract is executed to be effective as of the date of last signature.

**AT&T Corp.**

**Authorized By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** \_\_\_\_\_

**Name:** **Dale Richardson**

**Title:** **Chief Operations Officer**

**Date:** \_\_\_\_\_

**Office of General Counsel:** \_\_\_\_\_